NONPROFITS: FINANCE

Another Preliminary Injunction in OMB Memorandum (M-25-13) Litigation

03.12.25 | Linda J. Rosenthal, JD

"Well ahead of Inauguration Day 2025, the incoming administration announced its strategy: a "shock and awe" blitz" like the one eight years ago, except on steroids.

Indeed, at the stroke of noon on January 20th, the barrage of dramatic and controversial executive orders and directives as well as 180-degree policy-change announcements and actions began. It hasn't let up even now in the middle of the eighth week of the new leadership.

The charitable community is still reeling from many of these items including – most particularly – the now notorious *OMB Memorandum (M-25-13)*: *Temporary Pause of Agency Grant, Loan, and Other Financial Assistance Programs* (January 27, 2025) [the "Pause Memo"].

We've covered this story of the Pause Memo from the original events that late January evening that set off an almost-successful meltdown of the federal-funding system. We've also followed the rapid-fire pushback through the courts by two sets of plaintiffs. By the end of shock-and-awe Week 2, there were temporary restraining orders in place. See *Federal Funding "Pause": Five-Alarm-Fire, Doused for Now* (February 4, 2025); *Litigating Freezing-Funds Directive From OMB* (February 14, 2025); *The Federal-Funds Freeze & the Impoundment Control Act* (February 20, 2025); and *The Federal Offensive Against Nonprofits: Navigating Quicksand* (February 25, 2025).

On February 25, 2025, there was another milestone: the first preliminary injunction (nationwide) was granted in *National Council of Nonprofits et al v OMB et al,* U.S. District Court for the District of Columbia, Case No: 1:36-cv-00239, (D.D.C.), Judge Loren R. AliKhan. We wrote about that development in *Preliminary Injunction Granted Re Freezing-Funds Directive* (February 27, 2025).

The latest news is from March 6, 2025: the second preliminary injunction was granted in *State of New York et al v. Trump et al,* U.S. District Court for the District of Rhode Island, Case No: 1:25-cv-00039, Chief Judge James J. McDonnell, Jr. The plaintiffs here are a coalition of the twenty-three Democratic state attorneys general around the United States.

While not a nationwide injunction (for proper reasons of jurisdiction), it is an exciting and important development in the effort to resist harmful and outrageous federal actions. Notably, it's an (interim) win for the plaintiffs on each and every point. It begins: "The Executive's categorical freeze of appropriated and obligated funds fundamentally undermines the distinct constitutional roles of each branch of our government…."

The 45-page barn-burner of a judicial opinion is a must-read primer on Separation of Powers: an issue front and center not only in connection with the Pause Memo in this case, but also relevant in the multitude of lawsuits filed to challenge other orders from the White House.

But it's also worth the time savoring Chief Judge McDonnell's observation that the Founding Fathers must be turning over in their graves. "We begin by restating the American government principles learned during critical civics education lessons in our youth…."

And, adding In footnote, he warns: "This is what it all comes down to: we may choose to survive as a country by respecting our Constitution, the laws and norms of political and civic behavior, and by educating our children on civics, the rule of law, and what it really means to be an American, and what America means. Or, we may ignore these things at our . . . peril…."

Conclusion

There are a number of issues raised by this March 6th preliminary-injunction ruling that we'll discuss in follow-up posts. They include:

- How Judge McDonnell's ruling and preliminary-injunction order in favor of the state attorneys general overlaps – or does not overlap – with Judge AliKhan's February 25th ruling in favor of plaintiffs National Council of Nonprofits.
- Why there a nationwide preliminary injunction only in the NCN litigation in the District of Columbia federal court.
- If there are effective remedies or recourse if the government doesn't fully comply with one or both preliminary injunction orders. (There have been problems with non-compliance issues regarding the temporary restraining orders.)
- Whether and how these orders about the validity and enforceability of the Pause Memo will affect the litigation in federal courts around the nation about other executive orders, directives or actions affecting the charitable-nonprofit sector.

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